

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	MB Docket No. 13-282
Amendment of Section 73.202(b),)	RM-11706
Table of Allotments,)	
FM Broadcast Stations.)	
(Bruce and Water Valley,)	
Valley, Mississippi))	

Accepted/Files

JAN 28 2014

Directed to: Office of the Secretary
Attention: Media Bureau

Federal Communications Commission
Office of the Secretary

REPLY COMMENTS

Telesouth Communications, Inc. ("Petitioner"), by its attorneys, hereby respectfully submits its Reply Comments in response to the Counterproposal submitted in the above-captioned proceeding by Elijah Mondy on or about January 13, 2014. With respect thereto, the following is stated:

Whereas the *Notice of Proposed Rule Making* in this proceeding, DA 13-2229, released November 22, 2013, (the "*NPRM*"), proposes to substitute FM Channel 284A for vacant FM Channel 233A at Bruce, Mississippi, the Counterproposal requests that Channel 284A instead be allotted to the community of New Houlka (or Houlka), Mississippi as a new service. As an initial matter, however, it appears that the Counterproposal must be dismissed as defective. Section 1.401(d) of the Commission's Rules clearly provides that "[p]etitions to amend the FM Table of Allotments must be accompanied by the appropriate construction permit application and payment of the appropriate application filing fee" 47 C.F.R. §1.401(d). Counterproposals are included among the petitions which must be accompanied by the filing of an application for

construction permit for the proposed allotment. *See, Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006). Petitioner has been able to find no evidence in FCC records that Mr. Mondy filed an application for construction permit for the proposed New Houlka allotment, nor did his Counterproposal include any claim that he had made such a filing. Rather, he gave only a half-hearted expression of some type of interest, without even affirmatively committing to filing an application or participating in an auction for the allotment. Even if he had, however, the failure to file an application is a fatal defect which cannot later be cured, as the Commission's rule is quite explicit that a counterproposal must be *accompanied by* the requisite application and filing fee. Consequently, a counterproposal which is not filed simultaneously with an application cannot be considered and must be dismissed.

Accordingly, the proposal set forth in the *NPRM* and Petitioner's companion application can be approved without delay. Petitioner's companion application seeks a construction permit for minor modification of the licensed facilities of WTNM, Water Valley, Mississippi through substitution of FM Channel 234A for licensed FM Channel 288A at Water Valley, and to modify the license for WTNM accordingly. The substantial public interest benefits that would be realized by a grant of the application are set forth in the application. Petitioner simultaneously sought a change of channel at Bruce to accommodate the proposed modification of the WTNM facilities.

While as already indicated the proposal in the *NPRM*, and the Petitioner's companion application can be granted, there is another independent basis for approval of Petitioner's companion application totally apart from the *NPRM*. Based upon Petitioner's

analysis of the history of the allotment and prior use of the channel at Bruce, Petitioner notes that there is a substantial question as to whether there is any existing vacant allotment at Bruce to be modified. A construction permit (DWLFQ) was initially issued for Channel 233 at Bruce, however, the station was not built and that permit was cancelled in 1992. Thereafter, a noncommercial educational station licensee, with the call sign DWCMR-FM, held a license for the Channel 233, but that license was cancelled on May 24, 2012. As cancellation of a station license does not automatically result in an existing, vacant allotment, it follows that there may be no existing vacant allotment at Bruce. When the Commission changed its method of processing requests for changes in community of license to rely upon applications rather than petitions for rule making, the Commission also declared that from thenceforth, only vacant allotments would be included in the Table of Allotments in Section 73.202(b) of the Commission's Rules.

Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, 21 FCC Rcd 14212, 14213.

Existing stations are listed in CDBS but do not have a place in the Table of Allotments. DWCMR-FM was an existing station when the change in approach to the FM Table of Allotments was adopted. Accordingly, there is no listing for Bruce, Mississippi, in the Section 73.202(b) Table of Allotments, and the cancellation of the DWCMR-FM license did not add an allotment to the Table.

Consequently, it does not appear that there is any vacant allotment at Bruce. As a result, there is no impediment to an immediate grant of the WTNM modification application. Petitioner recognizes, however, that the Commission's approach to underlying channels vacated when a station license is cancelled is not completely settled

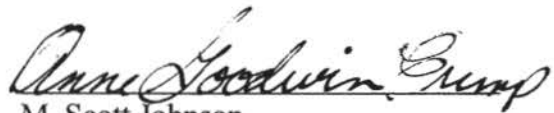
and thus sought a change in what had been the Bruce allotment. Logic dictates, however, that no Bruce allotment currently exists. Thus, for the foregoing reasons, totally apart from grant through approval of the NPRM, the WTNM companion application can be processed and granted without further delay.

WHEREFORE, the premises considered, Petitioner respectfully requests that the Commission take all necessary actions to process and grant the WTNM application for modification of license.

Respectfully submitted,

TELESOUTH COMMUNICATIONS, INC.

By:



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January 28, 2014

Certificate of Service

I, Evelyn M. Ojea, hereby certify that on this 28th day of Janaury, 2014, I caused a copy of the foregoing "Reply Comments" to be served via U.S. mail, postage prepaid, upon the following:

Elijah Mondy, Jr.
204 Moore Street
Helena, AR 72342



Evelyn M. Ojea